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## *Memorandum*

**TO:** Maine Board of Licensure in Medicine

**FROM:** Dennis E. Smith, Assistant Attorney General

**DATE:** September 1, 2009

**SUBJECT:** Board Applications and The Americans With Disabilities Act

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### Introduction

The purpose of this memorandum is to provide the MBOLIM with information regarding the Americans With Disabilities Act (ADA). In May 2009, MBOLIM Assistant Executive Director Dan Sprague requested that I review the current MBOLIM questions contained in applications for licensure in light of the ADA. On June 8, 2009, Mr. Sprague sent me an e-mail regarding this issue from the Federation of State Medical Boards (FSMB) that contained a link<sup>1</sup> to a study published in the June 2009 issue of *Academic Medicine* entitled "Do State Medical Board Applications Violate the Americans With Disabilities Act?" A copy of that study is attached to this memorandum. According to that study and an e-mail from Robin S. Schroeder, M.D., the two items on the MBOLIM's application that were identified as being "likely impermissible" were:

- Question # 6. "Have you EVER suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days?"
- Affidavit of Applicant: "I hereby authorize all hospitals, medical institutions or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present) and all governmental agencies and instrumentalities (local, state, federal, and foreign) to release to this licensing Board any information, files or records required by the Board for its evaluation of any professional and ethical qualifications for licensure in the state of Maine."

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<sup>1</sup>[http://journals.lww.com/academicmedicine/Fulltext/2009/06000/Do\\_State\\_Medical\\_Board\\_Applications\\_Violate\\_the.31.aspx](http://journals.lww.com/academicmedicine/Fulltext/2009/06000/Do_State_Medical_Board_Applications_Violate_the.31.aspx)

After reviewing this study, I consulted with the assistant attorney general who generally deals with ADA compliance issues, and who provided guidance to the Maine Board of Bar Examiners on this issue. Following those consultations, and a review of ADA case law from Maine and other jurisdictions, Mr. Sprague and I developed some proposed draft changes to the current questions that appear on the MBOLIM's applications for licensure.

### **Legal Background**

In reviewing this issue, the MBOLIM should be aware that a tension exists between the MBOLIM practice act (and supplemental laws) and the ADA. On the one hand, the State Legislature has charged the MBOLIM with the protection of the public; on the other hand, Congress has protected the rights of persons with disabilities from discrimination. In performing its licensing functions, the MBOLIM must reconcile these sometimes competing demands.

The MBOLIM is charged with protecting "the public health and welfare... by ensuring that the public is served by competent and honest practitioners." 10 M.R.S. § 8008. The MBOLIM is empowered "to license and set standards of practice for physicians and surgeons." 32 M.R.S. § 3269(3). In fact, the Legislature has specifically provided that an applicant for medical licensure "may not be licensed unless the board finds that the applicant is qualified and no cause exists, as set forth in section 3282-A, that may be considered grounds for disciplinary action." 32 M.R.S. § 3271(5). As a result, the MBOLIM has developed questions on its applications for licensure that are designed to identify those individuals who should not be licensed for reasons identified in section 3282-A(2).<sup>2</sup> Many of the factors identified in section 3282-A focus upon an applicant's current ability or fitness to practice.

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<sup>2</sup> Grounds to discipline or deny a license include: A. The practice of fraud or deceit in obtaining a license or in connection with service rendered within the scope of the license issued; B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; D. Aiding or abetting the practice of medicine by an individual who is not licensed under this chapter and who claims to be legally licensed; E. Incompetence in the practice for which the licensee is licensed; F. Unprofessional conduct; G. Conviction of a crime that involves dishonesty or false statement or relates directly to the practice of medicine; H. A violation of any Board statute or rule; I. Engaging in false, misleading or deceptive advertising; J. Prescribing narcotic or hypnotic or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes; K. Failure to report to the secretary of the board a physician licensed under this chapter for addiction to alcohol or drugs or for mental illness in accordance with Title 24, section 2505, except when the impaired physician is or has been a patient of the licensee; L. Failure to comply with the requirements of Title 24, section 2905-A; or M. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State.

The ADA prohibits a “public entity” from discriminating against an individual with a “disability.” 42 U.S.C. §§ 12131-12132. Section 12131 provides in relevant part:

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

“Qualified individual” is defined as someone who “with or without reasonable accommodation, can perform the essential functions of the... position that the individual holds or desires.” 42 U.S.C. § 12111(8). “Disability” is defined as “(A) a physical or mental impairment...; (B) a record of such impairment; or (C) being regarded as having such an impairment.” *Id.* at § 12102(2). Department of Justice regulations that implement the ADA define “physical or mental impairment” to include a wide variety of diseases and conditions, including drug addiction and alcoholism. 28 C.F.R. § 35.104. However, DOJ regulations specifically exclude the following conditions from the definition of “disability:” (i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; (ii) Compulsive gambling, kleptomania, or pyromania; or (iii) Psychoactive substance use disorders resulting from current illegal use of drugs. *Id.* (emphasis added). In addition, an applicant will not meet the essential eligibility requirements if he/she “poses a direct threat<sup>3</sup> to the health or safety of others.” 28 C.F.R. Ch. 1. Pt. 35, App. A at 446. The MBOLIM may not determine that an individual poses a direct threat based upon generalizations or stereotypes, but upon:

[A]n individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence to determine: the nature, duration, and severity of the risk; the probability that potential injury will actually occur; and whether reasonable modification of policies, practices and procedures will mitigate the risk.

*Id.* at 446.

DOJ regulations prohibit public entities from administering “a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability...” 28 C.F.R. § 35.130(b)(6). “The intent of this provision is that a person is a qualified individual if that person can meet ‘the essential eligibility requirements for receiving the license or certification.’” *In re Application of Underwood & Plano for Admission to the Bar of the State of Maine*, 1993 Me. LEXIS 267 (Docket No. BAR-93-21) citing 28 C.F.R., Ch 1. pt. 35, App. A, at 441. In addition, DOJ regulations prohibit the imposition of “eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities... unless such criteria can be shown to be necessary.” 28 C.F.R. § 35.130(b)(8) (emphasis added). “This requirement is intended to prohibit policies that impose unnecessary burdens on individuals with disabilities when those burdens are not placed on other people.” *In*

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<sup>3</sup> “Direct threat” is defined as a “significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.” 28 C.F.R. Ch. 1 pt. 35, App. A at 446.

*re Application of Underwood*, 1993 Me. LEXIS 267 citing 28 C.F.R., Ch 1. pt. 55, App. A, at 441.

The MBOLIM is a “public entity” for the purposes of the ADA.<sup>4</sup> Various courts, including the Maine Supreme Judicial Court, have dealt with the content of questions asked of applicants for licensure, especially questions regarding an applicant’s medical and mental health history. In general, questions that are broad, not time-limited (i.e. do not relate to current ability), and based solely upon an identified disability have been held to violate the ADA.<sup>5</sup> On the other hand, questions that are focused on behavior, conduct, judgment, and are time restricted (i.e. relate to current ability/fitness to practice) have been held not to violate the ADA.<sup>6</sup>

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<sup>4</sup> Section 12131(1)(B) defines “public entity” to include “any department, agency... or other instrumentality of a State or States or local government.” See *Hanson v. Medical Bd. of California*, 279 F.3d 1167, 1172 (9th Cir. 2002), reh on banc denied, 294 F.3d 1166 (9th Cir. 2002), cert. granted in part, *Medical Bb. Of Calif. v. Hanson*, 537 U.S. 1028, 123 S.Ct. 561, 154 L.Ed.2d 441 (2002), dismissed, 538 U.S. 958, 123 S.Ct. 1779, 155 L.Ed.2d 508 (2003)(medical licensing is a provision of a “service” under the ADA); *The Medical Society of N.J. v. Jacobs*, 1993 U.S. Dist. LEXIS 14294 (Civil Action No. 93-3670 (WGB)). See also *Brewer v. Wisconsin Board of Bar Examiners*, 2006 U.S. Dist. LEXIS 86765 (Case No. 04-C-0694)(The Wisconsin Board of Bar examiners is a “public entity” within the meaning of the ADA); *In re Petition and Questionnaire For Admission to the Rhode Island Bar*, 683 A.2d 1333, 1336 (RI 1996)(the ADA applies to State Bar admissions); *In re Application of Underwood & Plano for Admission to the Bar of the State of Maine*, 1993 Me. LEXIS 267 (Docket No. BAR-93-21)(The Maine Board of Bar Examiners is a “public entity” with the meaning of the ADA).

<sup>5</sup> See *The Medical Society of N.J. v. Jacobs*, No. 93-3670 (WGB), 1993 U.S. Dist. LEXIS 14294(The “exceedingly broad nature of most of the [application] questions” was unnecessary and the Board could “formulate a set of effective questions that screen out applicants based only on their behavior and capabilities.”<sup>5</sup>); *In re Petition and Questionnaire For Admission to the Rhode Island Bar*, 683 A.2d 1333, ¶ 8 (R.I. 1996)(The Board’s determination that “a person poses a direct threat to the public may not be based on generalizations or stereotypes about the effect of a particular disability.”). *Clark v. Virginia Board of Bar Examiners*, 880 F. Supp. 430, ¶ 49 (E.D. Va. 1995)(Question regarding mental health history was “too broad and should be rewritten” because it discriminated against “disable applicants by imposing additional eligibility criteria.”); *In re Application of Underwood & Plano for Admission to the Bar of the State of Maine*, 1993 Me. LEXIS 267 (Docket No. BAR-93-21)(Maine Board of Bar Examiners’ inquires of an applicant’s “mental health histories and requests for release of all medical records” violated the ADA “because it discriminate[d] on the basis of disability and impose[d] eligibility criteria that unnecessarily screen[ed] out individuals with disabilities.”

<sup>6</sup> *O’Brien v. Virginia Board of Bar Examiners*, 1998 U.S. Dist. LEXIS 4344 (C.A. No. 98-0009-A)(Upholding questions regarding specific mental illnesses within the past five years and chemical dependency or any other condition that affected his current ability to practice law.); *In re Petition and Questionnaire For Admission to the Rhode Island Bar*, 683 A.2d 1333, ¶ 14 (R.I. 1996)(The Board’s question was modified to ask if an applicant was “currently” using chemical substances or suffering from a disorder to the extent that ability to practice was impaired. The court also defined the terms “currently” and “ability to practice.”); *In re Application of Underwood & Plano for Admission to the Bar of the State of Maine*, 1993 Me. LEXIS 267 (Docket No. BAR-93-21)(“[I]t is certainly permissible for the Board of Bar Overseers to fashion other questions more directly related to *behavior* that can affect the practice of law...”).

**Greenwood, Jean M**

**From:** Sprague, Dan  
**Sent:** Monday, November 30, 2009 8:17 AM  
**To:** Greenwood, Jean M  
**Subject:** FW: FSMB BoardNet News 6-5-09/ License Application Questions  
**Importance:** High

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Dan Sprague, MBA  
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Maine Board Of Medicine  
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**From:** Sprague, Dan  
**Sent:** Monday, June 08, 2009 10:25 AM  
**To:** Smith, Dennis  
**Subject:** FW: FSMB BoardNet News 6-5-09/ License Application Questions  
**Importance:** High

Dennis,  
Re: License Application questions - look at the Academic Medicine study. In the linked document, the second last paragraph (before Acknowledgments) has advice.

**From:** Manning, Randal C  
**Sent:** Monday, June 08, 2009 8:56 AM  
**To:** Greenwood, Jean M; Lathrop, Maureen S; MacDonald, Maria A; Manning, Randal C; Morrison, Tracy A; Plummer, Vickie; Rowe, Paula M; Sprague, Dan; Terranova, Tim E; Veinott, Tammy L  
**Subject:** FW: FSMB BoardNet News 6-5-09  
**Importance:** High

Jean, please contact the other boards involved in the LD 1193 group. Let them know of this meeting, and invite them to come to our conference room to listen in on Wed.

Randal C. Manning, MBA  
Maine BOLIM  
(207) 287-3605

**From:** FSMB Boardnet News [<mailto:FSMBboardnet@fsmb.org>]  
**Sent:** Friday, June 05, 2009 6:02 PM  
**To:** #BoardNet News Recipients  
**Subject:** FSMB BoardNet News 6-5-09

**FSMB Boardnet News**  
**Friday, June 5, 2009**

**News from the Federation of State Medical Boards****June 10 Roundtable Discusses FDA Program to Expand Regulation of Opioid Analgesics**

The next FSMB Roundtable conference call is scheduled for Wednesday, June 10, from 2 to 3 p.m. Central Time. State medical boards are invited to participate by calling (866) 793-1301 and using conference ID# 1191807.

Bob Rappaport, M.D., of the Center for Drug Evaluation and Research for the Food and Drug Administration (FDA), will discuss the FDA's Risk Evaluation and Mitigation Strategies (REMS) program. This FDA initiative is designed to address the abuse of certain opioid analgesics. A public hearing on the proposed program was held May 27-28 in Washington, D.C., and written comments will be accepted through June 30. This program is particularly pertinent and of concern to state medical boards because it could place strict regulatory burdens on physicians, including special certification, as well as on patients. An additional issue is the potential for conflict with state board authority regarding the prescribing of pain medications.

For more information, please contact FSMB Government Affairs Director Tony Rutigliano at [trutigliano@fsmb.org](mailto:trutigliano@fsmb.org) or (817) 868-4023.

**Senate HELP Committee Issues Health Care Reform Briefing Paper**

The Senate Health, Education, Labor and Pensions (HELP) Committee is scheduled to begin formal consideration of health care reform legislation the week of June 15. The Senate Finance Committee will consider its version of health care reform legislation the week of June 22. The FSMB expects to have copies of the legislation or a detailed outline before the committees consider their bills.

On the House side, the committees of jurisdiction are scheduled to unveil their legislation on June 16, with hearings following. The formal "markup process" will occur after the July 4 recess. The attached briefing paper issued by the HELP Committee, "A New Vision for American Health Care: Strengthening What Works and Fixing What Doesn't", sets out priorities for forthcoming health reform legislation. Points of particular interest to state medical boards in the paper include:

- creating a state-based resource to facilitate obtaining coverage
- improving efficiencies in the delivery system, including promoting evidence-based medicine and utilizing electronic health records
- creating a Workforce Commission to make recommendations to ensure a sufficient supply of primary care physicians, nurses and other practitioners
- reforming medical school and residency curricula to include formal training in prevention and public health
- strengthening federal, state and local collaboration to curb health care fraud and abuse
- accepting a shared responsibility to adopt practices and tools to promote better quality, decrease medical errors and improve performance

The FSMB will provide information on a very timely basis as the Congress continues to consider health care reform. For further information, please contact Tony Rutigliano at [trutigliano@fsmb.org](mailto:trutigliano@fsmb.org) or (817) 868-4023.

**Academic Medicine Study Addresses Medical Board Applications and ADA**

A study published in the June 2009 issue of *Academic Medicine* ("Do State Medical Board Applications

Violate the Americans With Disabilities Act?") addresses whether questions on medical board licensure applications concerning the mental or physical health or substance use history of applicants violate the Americans with Disabilities Act (ADA) of 1990.

The study found 96 percent of state medical licensing applications reviewed contained questions pertaining to the physical or mental health or substance use history of the applicant, and 69 percent of those applications contained at least one "likely impermissible" or "impermissible" item based on the ADA and appropriate case law. To access the study, please visit [http://journals.lww.com/academicmedicine/Fulltext/2009/06000/Do\\_State\\_Medical\\_Board\\_Applications](http://journals.lww.com/academicmedicine/Fulltext/2009/06000/Do_State_Medical_Board_Applications). Related commentaries can be accessed at <http://journals.lww.com/academicmedicine/pages/currenttoc.aspx>.

### **HRSA Offers National Health Service Corps Loan Repayment Program**

The U.S. Health Resources and Services Administration is accepting new applications to support loan repayment for educational debt for primary care medical, dental and certain behavioral/mental health clinicians who want to work at National Health Service Corps sites. In exchange for loan repayment assistance, clinicians serve for two years with the Corps. New funding is expected to support about 3,300 clinicians to serve in health centers, rural health clinics and other sites providing care for uninsured and underserved people. Medical boards may wish to advise their licensees about the program. For more information, please visit <http://nhsc.hrsa.gov>.

### **Upcoming Events**

June 10, 2009: FSMB Roundtable Conference Call, 2-3 p.m. CT  
June 13, 2009: FSMB Editorial Committee, Dallas, Texas  
June 18, 2009: FSMB Webinar on International Medical School Accreditation, 2-3 p.m. CT  
July 30-Aug. 1, 2009: FSMB Board of Directors Meeting, Seattle, Wash.  
Aug. 12-13, 2009: 2009 AIM Institute Physician Licensing, Profiles and Technology Workshops, Boston, Mass.  
Sept. 24-25, 2009: Coalition for Physician Enhancement Fall Meeting, Chicago, Ill.  
Sept. 24-25, 2009: AIM Eastern and Southern Regional Meeting, Charleston, W.Va.  
Oct. 8-9, 2009: AIM Western and Central Regional Meeting, Omaha, Neb.  
April 21, 2010: AIM Annual Meeting, Chicago, Ill.  
April 22-24, 2010: FSMB Annual Meeting, Chicago, Ill.

*BoardNet News* is a weekly e-mail bulletin from the Federation of State Medical Boards, a national not-for-profit organization representing the 70 medical boards of the United States. If you do not wish to receive *BoardNet News*, please reply with the word "unsubscribe" in the subject line. For more information, contact Drew Carlson, director of Public Relations, at [dcarlson@fsmb.org](mailto:dcarlson@fsmb.org) or (817) 868-4043. Visit our website at [www.fsmb.org](http://www.fsmb.org) or write to FSMB, P.O. Box 619850, Dallas, TX 75261-9850.

Board Applications and The Americans With Disabilities Act  
Advice of Dennis E. Smith, Assistant Attorney General

Supplemental note: At the November 10, 2009 meeting of the Board of Licensure in Medicine the Licensure Committee approved the proposed application questions and presented them to the Board. See page 22 from the Minutes of that meeting attached.



# Do State Medical Board Applications Violate the Americans With Disabilities Act?

Robin Schroeder, MD, Chantal M.L.R. Brazeau, MD, Freda Zackin, Esq, Sue Rovi, PhD, John Dickey, MD, Mark S. Johnson, MD, MPH, and Steven E. Keller, PhD

## Abstract

### Purpose

To determine whether medical licensing board application questions about the mental or physical health or substance use history of the applicant violate the Americans with Disabilities Act (ADA) of 1990.

### Method

Content analysis of 51 allopathic licensing applications (50 states and District of Columbia) was performed at the University of Medicine and Dentistry of New Jersey—New Jersey Medical School in 2005. Questions referencing physical or mental health or substance use were identified by

a team of physicians and reviewed and categorized based on the ADA and appropriate case law by legal counsel.

### Results

Of the 51 applications reviewed, 49 (96%) contained questions pertaining to the physical or mental health or substance use history of the applicant. Thirty-four of the 49 (69%) state medical licensing applications contained at least one "likely impermissible" or "impermissible" item based on the ADA and appropriate case law.

### Conclusions

Most state medical licensing applications contain questions that ask about the physical or mental health and substance use of physician applicants. Many licensing applications appear to be in violation of the ADA, even 19 years after enactment of the regulation. These questions do not elicit responses by which professional competence can be judged. The presence of these questions on licensing applications may cause physicians to avoid or delay treatment of personal illness.

Acad Med. 2009; 84:776–781.

*Editor's Note: Commentaries on this article appear on pages 689 and 692.*

**T**he professional and competent practice of medicine by physicians is a

**Dr. Schroeder** is former assistant predoctoral director and family medicine clerkship director, and is presently medical director, Student Health and Wellness Center, and assistant professor, Department of Family Medicine, UMDNJ-New Jersey Medical School, Newark, New Jersey.

**Dr. Brazeau** is associate professor, Family Medicine and Psychiatry, and predoctoral director, Department of Family Medicine, UMDNJ-New Jersey Medical School, Newark, New Jersey.

**Ms. Zackin** is former associate dean for academic affairs and student services, UMDNJ-School of Health Related Professions, and is presently interim vice president for academic affairs, UMDNJ, Newark, New Jersey.

**Dr. Rovi** is assistant professor, Research Division, Department of Family Medicine, UMDNJ-New Jersey Medical School, Newark, New Jersey.

**Dr. Dickey** was a medical student working on a summer research project and has now graduated from UMDNJ-New Jersey Medical School. He is now a resident in internal medicine.

**Dr. Johnson** is professor and chair, Department of Family Medicine, UMDNJ-New Jersey Medical School, Newark, New Jersey.

**Dr. Keller** is professor and director, Research Division, Department of Family Medicine, UMDNJ-New Jersey Medical School, Newark, New Jersey.

Correspondence should be addressed to Dr. Schroeder, UMDNJ-New Jersey Medical School, 183 South Orange Avenue, Department of Family Medicine, 8HSB E 1557, Newark, NJ 07103; telephone: (973) 972-8219; fax: (973) 972-0018; e-mail: (schroers@umdnj.edu).

reasonable expectation of patients and society. The 10th Amendment of the U.S. Constitution authorizes each state to establish laws and regulations protecting the health, safety, and general welfare of its citizens. Pursuant to the 10th Amendment, each state enacted a medical practice act charging state medical boards with responsibility for granting licenses to physicians to practice in the state and to protect the public from the "unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive practice of medicine."<sup>1</sup> According to the Federation of State Medical Boards (FSMB), the national leader in the field of medical regulation, medical license "applicants must provide details about their work history, any arrests and convictions, and reveal information regarding past medical history that may affect their ability to practice."<sup>2</sup> There are many objective requirements for medical licensing, such as graduation from an accredited medical school, completion of a certain number of postgraduate years of training, and the successful completion of all parts of the National Board of Medical Examiners examinations. In addition, most licensing boards inquire about the physician's health (past and present) to determine competence to practice medicine. Hansen et al<sup>3</sup> examined medical licensure applications from 1993 and 1996 for the

presence of questions about previous mental illness, physical illness, and substance abuse. They found that 75% of applications in 1993, and 80% in 1996, asked questions about mental illness. In 1998, Sansone et al<sup>4</sup> reviewed the medical licensing board applications from 47 states and found that 85% of applications included questions pertaining to mental health conditions. Hansen et al's<sup>3</sup> study also recorded whether the questions addressed the effect of the condition on the applicant's "ability to practice" and not solely on past or present mental illness, physical illness, or substance use problem. The proportion of these applications inquiring about the effect of the mental disorder on "ability to practice" increased from 42% in 1993, to 75% in 1996. This is an important positive change because language that does not refer in some way to the "ability to practice" or that places additional requirements on an applicant with an affirmative response to a health inquiry may be a violation of the Americans with Disabilities Act (ADA) of 1990, a federal statute that prohibits discrimination on the basis of disability.

The ADA defines a disability as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an

impairment.”<sup>5</sup> The ADA, and the regulations that implement and explain the ADA, provide numerous examples of what constitutes a disability, including sight and hearing impairments, chronic and contagious diseases, and cancer. Medical conditions that substantially limit one’s ability to walk, talk, see, hear, and care for oneself all fall within the definition, as do many forms of mental illness, such as major depression or bipolar disorder, or a history of alcoholism or drug addiction currently in remission.<sup>5</sup> Current illegal use of drugs and certain sexual behavior disorders (including pedophilia, exhibitionism, and voyeurism) are not considered disabilities and are not protected under the ADA. Title II of the ADA defines a “qualified individual with a disability” as “a[n] individual with a disability who, with or without reasonable modification to rules, policies, or practices . . . meets the essential eligibility requirements for the receipt of services or the participation in the programs or activities provided by a public entity.”<sup>5</sup>

Medical licensing boards are state governmental agencies charged with granting licenses to physicians to practice in the state. Therefore, they satisfy the definition of a “public entity” and are included in the Department of Justice (DOJ) regulations (28 C.F.R. Part 35.101 et seq) implementing Title II of the ADA.<sup>5</sup> With respect to licensure, a physician is a qualified individual with a disability if he or she can satisfy the essential eligibility requirements for receiving the license or certification with or without accommodation. Licensing boards, such as state boards of bar examiners,<sup>6</sup> and to a lesser extent, state medical boards, have been under scrutiny. Such entities have not only been the subject of litigation regarding the questions on licensing applications or associated release of information required of the applicant but have also been involved in subsequent inquiries following affirmative responses by applicants.<sup>7,8</sup> The current literature does not adequately address these application questions in light of the ADA of 1990. This gap is identified in a current American Medical Association (AMA) policy statement, which says, “the AMA will . . . seek clarification of the application of the ADA to the actions of medical licensing and medical specialty boards.”<sup>9</sup>

The purpose of this review and analysis is to explore the legal permissibility of questions and associated release of information required of physicians on medical licensing applications that pertain to physical and mental health and substance use. Some have expressed concern that the presence of these questions on licensing applications may discourage physicians from seeking appropriate treatment because of fear of stigmatization, public disclosure, and effect on licensure.<sup>3,9,10</sup> By identifying legally questionable items and providing examples of more appropriate questions, we hope to prompt state medical boards to change licensing applications so that they address the critical issue of physician competence<sup>7,8,10,11</sup> and protect the public from impaired physicians without unnecessarily invading applicants’ privacy or adding regulatory and workplace barriers to physicians seeking treatment.

## Method

In 2005, we obtained from the Internet 47 of 51 (50 states plus the District of Columbia) allopathic medical licensing applications. The remaining four applications were obtained by mail. Our research team at the University of Medicine and Dentistry of New Jersey (UMDNJ)—New Jersey Medical School consisted of a board-certified family physician (R.S.), a physician who was board certified in family medicine and psychiatry (C.B.), a sociologist (S.R.), a summer research medical student (J.D.), and an attorney (F.Z.). To identify questions and associated release of information requests about physicians’ medical history and extract them for analysis, we first selected three random applications for review. The first four team members read all questions on the applications and located those items that inquired about or made reference to physical health, mental health, and substance use. Next, team members compared each others’ selected items from the three applications to ensure there was agreement in the identification of relevant items. Then, three copies of the 51 applications were distributed such that two members of the team reviewed and extracted relevant items from each application. The extracted items were classified as mental health, physical health, or substance use. The attorney on our team (F.Z.) then reviewed the

extracted items and evaluated them in accordance with the ADA and the small number of legal cases that have considered the appropriateness of specific professional license application questions. Some types of questions have been litigated in more than one jurisdiction, resulting in conflicting opinions. No single question has been upheld in one jurisdiction and struck down in another. Most were litigated with regard to licensing procedures for the legal profession. Using best judgment of current trends in ADA law, categories were created after reviewing the extracted items. We classified items as “Permissible,” “Likely Permissible,” “Likely Impermissible,” and “Impermissible.”

## Permissible

Permissible items were generally recognized as consistent with the ADA and consistent with one of the following subcategories:

1. Questions that elicit information concerning the applicant’s current fitness to perform the essential functions of a physician, including questions about current physical or mental conditions that interfere with the applicant’s job, school, or analogous activities. (Example: *Do you have a physical or medical condition that currently impairs your ability to practice your profession?*)
2. Questions concerning current or very recent substance use or illegal activity. (Example: *Are you currently addicted to or dependent upon narcotics, intoxicating liquors, or other substances?*)
3. Questions that are specifically excluded from ADA protection. (Example: *Have you ever been diagnosed as having or have you ever been treated for pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders?*)

## Likely permissible

Questions were likely permissible if they had been upheld in at least one jurisdiction and were consistent with one of the following subcategories:

1. Courts have upheld questions that would otherwise be impermissible because they elicit information about serious disorders that experts in those cases indicated are likely to interfere with an applicant’s current ability to practice. (Example: *Have you in the*

last ten years or since the age of 18 been treated for or hospitalized for bipolar disorder, schizophrenia, paranoia, or any other psychotic disorder? [Applicants v. Texas State Board of Law Examiners, WL 923404 (W.D.Tex 1994)]).

2. One jurisdiction addressed a question which would have been impermissible if asked of the applicant directly, but which was upheld because the question was directed to an applicant's reference, which the court determined imposed no additional burden on the applicant. (Example: *To references: Do you have knowledge of any drug or alcohol dependency or abuse by the applicant during the previous ten years or know of any emotional, mental, behavioral or nervous affliction?* [McCready v. Illinois Board of Admissions to the Bar, WL 29609 (N.D.Ill 1995)]).

### Likely impermissible

We considered questions to be likely impermissible if they had been struck down in at least one jurisdiction and were consistent with one of the following subcategories:

1. Courts have struck down questions that elicit information that is too remote in time to be necessary to evaluate an applicant's current fitness to practice. (Example: *Within the ten year period prior to the date of this application, have you ever received treatment of emotional, nervous, or mental disorder?* [Underwood v. Plano, WL 649283 (Me.1993)]).
2. Courts have struck down questions that are so broad in scope that they elicit information concerning illnesses or treatment which may not be relevant to the applicant's current fitness to practice, such as grief counseling, marital counseling, eating disorders, etc. (Example: *Have you within the past five years, been treated or counseled for any mental, emotional, or nervous disorders?* [Clark v. Virginia Board of Bar Examiners, 880 F. Supp. 430 (E.D. Virginia 1995)]; [Doe v. Fifteenth Judicial Circuit of Florida, 906 F. Supp. 1534 (S.D. Florida 1995)]).

### Impermissible

Questions that were clearly inconsistent with the ADA, had been struck down in more than one jurisdiction, or were

consistent with one of the following subcategories were deemed impermissible:

1. Questions about past diagnoses, treatment, or physical or mental conditions that specify no time limitation or are not necessarily related to the applicant's fitness to perform the essential functions of a physician infringe rights protected under the ADA. (Examples: [1] *Have you ever been hospitalized, institutionalized or admitted to any medical or mental health facility [either voluntarily or involuntarily] for treatment or evaluation for any emotional disturbance, nervous or mental disorder?* [In re Petition and Questionnaire for Admission to the Rhode Island Bar, 683 A. 2d 1333 (R.I.1996)]; [2] *Have you ever sought treatment for a nervous, mental or emotional condition or ever been diagnosed as having such a condition or ever taken any psychotropic drugs?* [Ellen S. v. Florida Board of Bar Examiners, 859 F. Supp. 1489 (S.D. Fla. 1994)]).
2. Questions that elicit information about an applicant's record of disability or "status," rather than current or future ability to perform. (Example: *State whether you have, since attaining the age of 18, been adjudged an incompetent, or had proceedings brought to have you adjudged an incompetent, or been committed to or been a patient in any institution for the care of persons suffering from mental or nervous disorders or drug addiction, drug abuse, or alcoholism.* [Dicta in Campbell v. Greisberger, 865 F. Supp. 115 (W.D. N. Y. 1994)]).
3. Questions related to past disabilities that trigger additional burdens, such as submission of additional documents, medical records, or personal appearances, that are not required of applicants who have no record of a disability. (Example: *Have you ever suffered or been treated for any mental illness or psychiatric problems?* If the applicant answers in the affirmative to any of these questions, he or she is required to have any "treating physicians [...] submit directly to the board office, a summary of the diagnosis, treatment and prognosis relating to any of the above."

[Medical Society of New Jersey v. Jacobs, WL 413016 (N.J. 1993)])

The attorney involved who developed these categories (F.Z.) was selected for this study because of her extensive experience in disability issues at UMDNJ. She was a director of the Office of Legal Management at UMDNJ for more than 20 years, responsible for in-house legal advice in all matters pertaining to application of the ADA to faculty, resident, and student matters. She developed and interpreted university policies and procedures to address issues concerning impaired faculty and students, health and immunization requirements, students with disabilities and requests for accommodations, HIV, hepatitis B virus, and hepatitis C virus health and safety, privacy of protected health information, and health care ethics. She served on university committees to determine eligibility of students with infectious diseases to participate in educational programs and to review and approve requests for accommodations for disabilities. She has been a member of the university legal defense team in more than 10 cases in which faculty, students, and residents have alleged discrimination on the basis of disability.

This study was classified as exempt by the UMDNJ institutional review board.

### Results

Our attorney reviewed a total of 248 questions across all 51 licensing applications. Two applications (4%) did not have any questions regarding physical or mental health or substance use. Of the 49 remaining applications, 38 (78%) included items about physical health, 42 (86%) included items about mental health, and 49 (100%) included items pertaining to substance use. One hundred nine (44%) questions were categorized as permissible, 66 (27%) were likely permissible, 42 (17%) were likely impermissible, and 31 (12%) were impermissible (Table 1). Thirty-four of these 49 (69%) state medical licensing applications contained at least one "likely impermissible" or "impermissible" item.

Applications often require a complete explanation of affirmative answers from the treating health care provider or applicant, including notarized

Table 1

**Categorization by State of Items\* Extracted From Each of 51 Medical License Applications, 2005**

State	Item 1	Item 2	Item 3	Item 4
Alabama	7	2	0	0
Alaska	4	0	5	3
Arizona	3	1	0	1
Arkansas	1	0	4	2
California	1	1	0	0
Colorado	0	4	0	0
Connecticut	0	0	0	0
Delaware	6	1	0	0
District of Columbia	2	0	1	0
Florida	0	3	4	0
Georgia	0	0	0	4
Hawaii	0	1	0	0
Idaho	2	1	0	0
Illinois	0	1	0	0
Indiana	1	0	0	3
Iowa	7	0	0	1
Kansas	6	2	0	0
Kentucky	0	8	0	1
Louisiana	1	1	1	0
Maine	0	0	2	0
Maryland	3	1	1	1
Massachusetts	5	1	0	0
Michigan	1	1	0	0
Minnesota	4	1	2	0
Mississippi	2	1	4	0
Missouri	0	1	1	3
Montana	0	2	0	0
Nebraska	0	1	2	1
Nevada	3	0	1	1
New Hampshire	0	1	3	0
New Jersey	4	0	1	0
New Mexico	1	3	0	1
New York	0	0	0	0
North Carolina	0	4	0	1
North Dakota	0	3	1	0
Ohio	7	0	2	1
Oklahoma	1	2	0	0
Oregon	0	4	1	0
Pennsylvania	2	1	1	1
Rhode Island	0	2	0	2
South Carolina	1	1	1	0
South Dakota	3	2	0	0
Tennessee	5	0	1	0
Texas	0	1	0	1
Utah	5	1	0	0
Vermont	4	1	1	0
Virginia	1	1	0	0
Washington	5	0	1	0
West Virginia	3	3	0	1
Wisconsin	7	0	0	1
Wyoming	1	1	1	1

\* An "item" is a question, release, reference, or affidavit pertaining to an applicant's mental or physical health or substance abuse history.

documentation of diagnosis, treatment, and prognosis. Forty-four (86%) of the applications required the applicant to provide additional information, often on a separate piece of paper or in the form of a sworn affidavit, to explain the medical condition or history of substance use (generally defined to include alcohol and drug use). Four (8%) of the applications do not require additional written explanation; however, in these cases the applicant must sign a release of information authorizing access to personal medical records when a question is answered "yes." One state has a public records law that does not require disclosure of personal medical information unless it can be shown that the public interest requires disclosure in a particular instance.

### Conclusions

To practice medicine in the United States, physicians must obtain a license through the state medical board. Each state medical board must protect the public from the "unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive practice of medicine."<sup>1</sup> The FSMB states that "applicants must provide details about their work history, any arrests and convictions, and reveal information regarding past medical history that may affect their ability to practice,"<sup>2</sup> but many state applications do not include the "ability to practice" qualifier. Some ask direct medical history questions, including questions regarding physical or mental illnesses in the remote past. Many of these inquiries are included within a larger list of nonmedical questions for which follow-up is required (e.g., prior discipline or loss of license or privileges, malpractice, criminal history). The placement of these questions within such lists puts physician illness in a punitive context within the application. An affirmative response to any of these questions may precipitate a detailed review and interview by the state licensing board, a process not specifically described in the application. Records of such inquiries by state medical boards may be shared with other state medical boards through the FSMB and, in some states, are available to the public.<sup>12</sup> Additionally, an affirmative response to one of these questions usually requires additional documentation from treating

physicians, hospitals, or other health care providers.

Regulations developed by the DOJ to implement the ADA (28 C.F.R. Part 35.101 et seq) prohibit policies that unnecessarily impose requirements or burdens on otherwise qualified individuals with disabilities that are greater than the requirements or burdens imposed on nondisabled persons. Questions that require follow-up only from applicants who admit having a medical condition place an extra burden on applicants with disabilities while not imposing the same burden on nondisabled applicants. The only and, therefore, most prominent case on the issue of medical license applications and disability discrimination arose in the U.S. District Court in New Jersey in 1993. Although this case is unpublished, it is widely available for reference and has been cited in several subsequent cases involving state bar associations. In that case, the Medical Society of New Jersey brought suit against the New Jersey State Board of Medical Examiners, seeking an injunction (court order) that would require the state board to remove certain questions from its licensing applications and renewal forms.<sup>13</sup> All of the disputed questions involved issues of medical condition, medical history, and drug and alcohol use/abuse. The court denied the medical society's motion because there were insufficient grounds to grant an injunction. Nevertheless, the court found fault with the licensing questions, stating, "The Court is confident that the Board can formulate a set of effective questions that screen out applicants based only on their behavior and capabilities." So, it is the conduct of the physician, not an illness, that determines fitness to practice.<sup>13</sup> The court also stressed that it is the extra investigations of qualified applicants who answer "yes" to one of the challenged questions that constitutes "invidious discrimination under the Title II regulations."<sup>13</sup> The New Jersey board subsequently changed the disputed questions on the application. The AMA supports this view in a current policy that "urges licensing boards, specialty boards, hospitals and their medical staffs, and other organizations that evaluate physician competence to inquire only into conditions which impair a physician's current ability to practice medicine."<sup>11</sup>

Many health and safety professionals are required to complete applications for licensure or certification that contain questions similar to those we have identified as ADA noncompliant. The comments and recommendations that we make regarding the medical licensing application questions should be applied to these as well. We recommend that medical licensing application questions regarding physician health be written similarly to these which have been taken directly from two state applications: *Are you currently experiencing any medical condition or disorder that impairs your judgment or that otherwise affects your ability to practice medicine in a safe and competent manner?* or *Do you currently have a medical condition which in any way limits or impairs your ability to practice medicine or to function as a physician?* Once initial questions focus on the ability to practice instead of on medical conditions, then additional information related to the applicant's need for accommodation may be obtained.

The medical profession does not encourage physicians to admit health vulnerability or to seek help. There is scant current literature describing physicians' use of mental health services, although barriers to seeking services appear to be many.<sup>14</sup> Physicians may seek treatment from a trusted colleague in an unofficial manner, they may treat themselves, or they may go untreated. There is a realistic concern that the presence of these inappropriate questions on licensing applications may discourage physicians from seeking appropriate treatment because of fear of stigmatization, public disclosure, and effect on licensure.<sup>3,14-16</sup> Licensing application questions may be just one barrier physicians encounter when seeking treatment, but this is one that can be changed. Distressed physicians who are untreated, especially for mental health disorders, actually have an adverse effect on public safety because they may be less likely to identify and treat similar disorders in their patients<sup>14</sup> and may be more prone to medical errors in daily practice.<sup>15</sup> Thus, although detailed questions about physician health on medical licensing applications may appear to better fulfill the board's responsibility to protect the public, intrusive, ADA-noncompliant questions may defeat this very purpose and have an adverse effect on physician health and on

the health and safety of the public. From our analysis it appears that, in many states, a balance has not yet been achieved.

## Acknowledgments

The authors acknowledge and thank Douglas Zucker, attorney with Schenck, Price, Smith & King, LLP, Morristown, New Jersey, for the legal research conducted for a similar pilot study in 1998.

This study was supported by the Department of Family Medicine, University of Medicine and Dentistry of New Jersey–New Jersey Medical School.

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## Teaching and Learning Moments

### Becoming a Team

Teamwork is fast becoming an important component of health care quality and safety improvement, but do current initiatives in health professions education address this emerging paradigm early enough? My own experience during the first year of medical school is one example of incorporating teamwork early into the medical curriculum.

During my first week of medical school, my classmates and I each became members of a Learning Team. Every team comprises six students who work together until graduation. One of our first tasks was to agree on core values to establish common goals and commitments. We then drafted operating principles to set rules of behavior during team meetings and to allow for mutual accountability. Working through these tasks at the onset was an important component to our later success.

As the year progressed, our Learning Team became more than just a requirement of the curriculum. We participated in small-group discussions, completed projects, and took exams together. Under such high stakes, our team could draw on our collective knowledge and excel. Sometimes, these situations would also reveal the gaps in our still-developing

communication skills. Working together, we grew to appreciate and depend on the strengths and weaknesses of each team member.

But working as a team was not easy. We all came to the table educated, opinionated, and accustomed to being correct. Naturally, we had many disagreements. But these were learning opportunities that we worked through. A highlight of the year was a team analysis project for which we observed a clinical team at our teaching hospital, assessing their strengths and weaknesses and comparing their team to our team. We found that, similar to our experience, they struggled with core aspects of teamwork, such as communication and accountability. As part of the project's conclusion, we prescribed changes for their team that had helped us.

My Learning Team experience was a surprisingly influential part of my first year of training. In a few months, I will begin my clerkship rotations and work with many different clinical teams. The lessons I have taken away from my Learning Team experience will help me become an important member of each team, improve my interactions with faculty and staff, and enhance my educational experience.

Integrating teamwork into medicine is undeniably more challenging than in other industries. Clinical teams are complex and change frequently. Health care professionals train in separate disciplines, and specialization creates fragmentation within hospitals and ambulatory practices. But these aspects that make medicine so unique cannot be used as an excuse not to try.

Medicine can be resistant to change, but incorporating teamwork early into the medical curriculum can overcome this. Change that starts with students will radiate outward as they graduate and share their experiences. I have often heard people compare physician training to running a marathon. World-class marathon runners begin running as children, running faster and farther each year. Similarly, I believe that the best physicians will be those who work well in a team because they have been doing so from the beginning of their education and know of no other way.

#### Christopher B. Morse

**Mr. Morse** is a second-year medicine student, University of Pennsylvania School of Medicine, Philadelphia, Pennsylvania; (cmorse@mail.med.upenn.edu).

STATE OF MAINE BOARD OF BAR EXAMINERS

23. Have you ever filed a petition for bankruptcy? ☐ Yes ☐ No

*If Yes, complete FORM 4.*

24. A. Have you had any debts of \$500 or more (including alimony, child support, credit cards, charge accounts and student loans) which have been more than 90 days past due within the past three years? ☐ Yes ☐ No

- B. Have you ever had a credit card or charge account revoked? ☐ Yes ☐ No

- C. Have you ever defaulted on any student loan? ☐ Yes ☐ No

- D. Have you ever defaulted on any other loan? ☐ Yes ☐ No

- E. Have you filed state and federal income tax returns for each of the last five years? ☐ Yes ☐ No

*If Yes to Question 24. A, B, C or D, or No to E complete FORM 6.*

**PREAMBLE TO QUESTIONS 25, 26, AND 27**

Through this application, the Maine Board of Bar Examiners makes inquiry about recent mental health and addiction matters. This information, along with all other information, is treated confidentially by the Board. The purpose of such inquiries is to determine the current fitness of an applicant to practice law. The mere fact of treatment for mental health problems or addictions is not, in itself, a basis on which an applicant is ordinarily denied admission in most jurisdictions, and boards of bar examiners routinely certify for admission individuals who have demonstrated personal responsibility and maturity in dealing with mental health and addiction issues. The Maine Board of Bar Examiners encourages applicants who may benefit from treatment to seek it.

Boards do, on occasion, deny certification to applicants whose ability to function is impaired in a manner relevant to the practice of law at the time that the licensing decision is made, or to applicants who demonstrate a lack of candor by their responses. This is consistent with the public purpose that underlies the licensing responsibilities assigned to bar admission agencies; further, the responsibility for demonstrating qualification to practice law is ordinarily assigned to the applicant in most jurisdictions.

The Maine Board of Bar Examiners does not ordinarily seek medical records, although it may do so.

The Board does not, by its questions, seek information that is fairly characterized as situational counseling. Examples of situational counseling include stress counseling, domestic counseling, grief counseling, and counseling for eating or sleeping disorders. Generally, the Board does not view these types of counseling as germane to the issue of whether an applicant is qualified to practice law.

**STATE OF MAINE BOARD OF BAR EXAMINERS**

25. A. Do you currently use any drug, narcotic or substance which use is illegal under state or federal law?

☐ Yes      ☐ No

*If Yes, please explain.*

- B. Have you ever claimed to be or been declared legally incompetent?

☐ Yes      ☐ No

*If Yes, please explain.*

*If your answer to either Question 25 (A) or (B) is Yes, complete FORMS 7 and 8.*

26. A. Within the last three (3) years have you had any condition or impairment (including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional, or nervous disorder or condition) which in any way currently affects, or if untreated could affect, your ability to practice law in a competent and professional manner?

☐ Yes      ☐ No

*If your answer to Question 26 (A) is Yes, complete FORMS 7 and 8.*

- B. If your answer to Question 26(A) is Yes, are the limitations or impairments caused by your mental health condition or substance abuse problem reduced or ameliorated because you receive ongoing treatment (with or without medication) or because you participate in a monitoring program?

☐ Yes      ☐ No



**STATE OF MAINE BOARD OF BAR EXAMINERS**

27. A. Within the past five years, have you ever raised the issue of consumption of drugs or alcohol or the issue of a mental, emotional, nervous, or behavioral disorder or condition as a defense, in mitigation of, or as an explanation for your actions in the course of any administrative or judicial proceeding or investigation; any inquiry or other proceeding; or any proposed termination by an educational institution, employer, government agency, professional organization, or licensing authority?

☐ Yes      ☐ No

*If you answered Yes, furnish a thorough explanation below:*

*Name of Entity before which the issue was raised (i.e. court, agency, etc.):* \_\_\_\_\_

*Address:* \_\_\_\_\_

*City:* \_\_\_\_\_ *State:* \_\_\_\_\_ *Zip:* \_\_\_\_\_

*Telephone:* (    ) \_\_\_\_\_

*Nature of the Proceeding:* \_\_\_\_\_

*Explanation:* \_\_\_\_\_

\_\_\_\_\_

- B. Are there any other facts not disclosed hereto concerning your background, history, experience or activities which may have a negative bearing on your character, moral fitness, or eligibility to practice law in Maine?

☐ Yes      ☐ No

*If Yes, please attach a statement giving a full explanation.*

**STATE OF MAINE BOARD OF BAR EXAMINERS**

17. D. Have you ever been asked to resign or given the opportunity to resign in lieu of disciplinary action or termination from any organization for any reason?

☐ Yes ☐ No

*If you answer Yes to Questions 17. A, B, C or D, please provide the following information:*

Name of Regulatory Agency: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Agency Action: \_\_\_\_\_

Explanation: \_\_\_\_\_

18. A. Has any surety on any bond on which you were the principal been required to pay any money on your behalf?

☐ Yes ☐ No

*If Yes, complete FORM 2.*

- B. Have you or any business in which you had an interest ever been refused a fidelity or other bond?

☐ Yes ☐ No

*If Yes, complete FORM 2*

**STATE OF MAINE BOARD OF BAR EXAMINERS**

19. Have you ever been a named party to any civil action? ☐ Yes ☐ No

*If Yes, complete FORM 3.*

**NOTE:** Family law matters (including divorces and continuing orders for child support) should be included here.

IF YOUR ANSWER IS YES, BE SURE TO ATTACH A COPY OF THE PLEADINGS (INCLUDING COMPLAINT AND ANSWER) AND COURT'S NOTATION REGARDING THE FINAL DISPOSITION OF THE SUIT, INCLUDING ANY FINAL JUDGMENTS OR ORDERS. IF THE MATTER WAS SETTLED PRIOR TO TRIAL, PROVIDE COPIES OF THE FINAL RELEASE/SETTLEMENT AGREEMENT.

20. Have you ever had a complaint filed against you in any civil, criminal or administrative forum alleging fraud, deceit, misrepresentation, forgery or legal malpractice? ☐ Yes ☐ No

*If Yes, complete FORM 3.*

IF YOUR ANSWER IS YES, BE SURE TO ATTACH A COPY OF THE PLEADINGS (INCLUDING COMPLAINT AND ANSWER) AND COURT'S NOTATION REGARDING THE FINAL DISPOSITION OF THE SUIT, INCLUDING ANY FINAL JUDGMENTS OR ORDERS. IF THE MATTER WAS SETTLED PRIOR TO TRIAL, PROVIDE COPIES OF THE FINAL RELEASE/SETTLEMENT AGREEMENT.

21. A. Have you ever been cited for, arrested for, charged with, or convicted of any alcohol or drug related traffic violation other than a violation that was resolved in juvenile court: ☐ Yes ☐ No

*If Yes, complete FORM 5T. Do not attach a printout of your driving records as it will not be accepted. You must provide the information yourself.*

**STATE OF MAINE BOARD OF BAR EXAMINERS**

21. B. Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? (Omit parking violations).
- ☐ Yes      ☐ No

*If Yes, complete FORM 5T. Do not attach a printout of your driving records as it will not be accepted. You must provide the information yourself.*

- C. Have you applied for or been issued a driver's license or operator's permit in any state or jurisdiction other than listed on page 5.

☐ Yes      ☐ No

*If Yes, list each jurisdiction and the approximate date the license or permit was initially issued.*

*Jurisdiction*

*Date License/Permit Issued*


- D. Has your driver's license in any state ever been suspended or revoked?

☐ Yes      ☐ No

*If Yes, complete FORM 5S and state the complete facts and circumstances surrounding the suspension or revocation including, but not necessarily limited to: name and address of suspending or revoking authority; date of each suspension or revocation; if suspended, the length of the suspension; the reason for the suspension or revocation; whether the license was reinstated; and any other facts which may be pertinent.*

22. Have you ever, as an adult, been cited, arrested, charged or convicted for any violation of any law (except traffic violations)?
- ☐ Yes      ☐ No

**NOTE:** This answer should include matters that have been expunged or been subject to a diversionary program.

*If Yes, complete FORM 5.*

Board Applications and The Americans With Disabilities Act  
Advice of Dennis E. Smith, Assistant Attorney General  
November 30, 2009

Supplemental note: At the November 10, 2009 meeting of the Board of Licensure in Medicine the Licensure Committee approved the proposed application questions and presented them to the Board. After further refinements the Board will put the new questions in place in early 2010.